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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/623/2013-RA

Date of Issue: 12.02.20

ORDER NO. 168/2020-CX (WZ)/ASRA/MUMBAI DATED 05.02.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Standard Friction Components Ltd.

Respondent : Commissioner, Central Excise, Thane-I.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BR/127/TH-I/2013 dated 25.02.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

ORDER

This Revision Application is filed by M/s Standard Friction Components Ltd., Village Sarmal, Post: Washind, Pal: Shahapur, Dist: Thane 421 604 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BR/127/TH-I/2013 dated 25.02.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. The issue in brief is the Applicant is engaged in the manufacture of excisable goods falling under Chapter 68 of the Central Excise Tariff Act, 1985. The Applicant had cleared their goods for export under a Letter of Undertaking(LUT) furnished to the Assistant/Deputy-Commissioner of Central Excise, Kalyan-II Division. The Applicant then had failed to furnish along with the Annexure-19, the Original copies of the ARE-1s with due certification of export (Pass of shipment orders) by the Customs authorities and Self attested photocopies of Bills of Lading and Shipping Bills(EP copies). The Applicant had neither intimated any loss of the documents which they failed along with the Annexure-19 nor furnished the evidence such as Bank Remittance Certificate, Mate Receipts etc. when called for from them in order to satisfy that the goods have actually been exported. It also appeared that they had cleared the goods valued at Rs. 17,81,678/- during the period April 2006 to September 2006 involving Central Excise duty of Rs 2,90,769/-. Hence they were issued Show Cause Notice vide F.No. C.Ex./R-II/K-II/STD/SCN/07/5096 dated 19.11.2007. The Applicant then vide their letters dated 23.04.2008 and 05.05.2008 submitted certain documents which were sent to the jurisdictional Superintendent to verify the same. The jurisdictional Superintendent vide letter F.No. C.Ex./R-II/K-II/STD/2007 dated 19.05.2008 then submitted his report. The Assistant Commissioner, Central Excise, Kalyan-II, Thane-I vide Order-in-Original No. 09/2008-09 dated 24.07.2008 confirmed the demand of Rs 2,90,769/- along with interest and also imposed penalties of Rs 2,90,769/- under

Section 11AC of Central Excise Act, 1944 and Rs. 10,000/- under Rule 25 of the Central Excise Rules, 2002. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise, Mumbai Zone-I, who vide Order-in-Appeals No. BR/127/TH-I/2013 dated 25.02.2013 reduced the confirmed demand to Rs. 1,58,604/- along with interest and accordingly reduced the Penalty under Section 11AC to Rs. Rs. 1,58,604/- and sustained the penalty of Rs. 10,000/- imposed under Rule 25.

3. Being aggrieved, the Applicant filed the Revision Application on the grounds that the vide their letter F.No. SFCL/08-09/025 dated 26.06.2008 the Applicant had submitted an Indemnity Bond for the loss of the ARE-1s mentioned in the SCN. They had already submitted Custom endorsed copy of Triplicate and Quadruplicate relating to ARE-1 No. 1 dated 28.04.2006 and Invoice No. 1 dated 04.05.2006. Further, there is also no dispute that they had submitted all other relevant documents pertaining to all the ARE-1s question which was recorded at Para 7 in the Order-in-Original dated 27.07.2008. Therefore, based on the documents submitted, it is very clear that the actual export had taken place within one month itself of the clearance from the factory. Hence in view of the overwhelming documentary evidences, there is no suppression as alleged and confirmed by the department. Therefore, demand is time barred and when the demand itself is time barred penalty of equal amount along with other penalty are not imposable an on this ground the impugned order is liable to be set aside. The Applicant prayed that the ~~impugned order be set aside~~ and the revision application be allowed in full.

4. A personal hearing in the case was held on 03.10.2019. Shri Gurvinder Singh Sachdev, Director appeared on behalf of the Applicant and Shri Siddhartha Maddikunta, Assistant Commissioner appeared on behalf of the Respondent. The Applicant submitted that the CHA withheld the document and though ARE-1s were not submitted, all the supporting documents and Bank reconciliation was given and the discrepancies in

value is raised by the department. The sought relief for closure. The Respondent sought restoration of Order-in-Original as reduction in penalty was not justified

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. On perusal of the records, the Government observes that the Applicant, manufacturer holding Central Excise Registration No. AAFCS 2687HXM001 had cleared their goods for export under Letter of Undertaking (LUT) as per the provision of Rule 19 of the Central Excise Rules, 2002 read with Notification No. 42/2001-CE(NT) dated 26.06.2001. There was a failure from the Applicants to furnish proper supporting documents along with the Accexure-19 i.e. original copies of the ARE-1s with due certification of export (Pass of shipment orders) by the Customs authorities and hence the rebate claim was rejected by the original authority. The Commissioner (Appeals) vide Order-in-Appeal No. BR/127/TH-I/2013 dated 25.02.2013 while rejecting the appeal filed by the Applicant held that

"10.The present provision of the law requires the assessee to ensure that the specified documentary proof of export of goods are produced when the goods are cleared without payment of duty and in case of default, the liability of duty and penalty would be attracted. Hence, it cannot be held that the penalty under Section 11AC of the Central Excise Act, 1944 and/or Rule 25 of the Central Excise Rules, 2002 have been incorrectly imposed on the appellant."

7. Government in the instant case notes that the original and duplicate copies of relevant ARE-1s were misplaced/lost by the Applicant. The Applicant had executed an Indemnity Bond vide their letter F.No. SFCL/08-09/025 dated 26.06.2008, indemnifying the Government for the loss, or

damage caused by misplacement of the subject ARE-1 and the admission of document by the said authorities for admission of rebate claim.

8. In this regard Government observes that while deciding the identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed as under :-

16. *However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002, read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the*

revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367, Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise 2007 (217) E.L.T. 264 and Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777.

17. *We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE 1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April, 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.*

9. Government also observes that Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relying on aforesaid order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 observed as under :

7. *"Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is*

not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions”.

10. Government finds that rationale of aforesaid Hon'ble High Court orders are squarely applicable to this case. Further, as claimed by the Applicant in Revision Application, Government further observes that on the basis of the jurisdictional Superintendent-of Central Excise Range-II in his verification report letter F.No. C.Ec./R.II/K.II/STD/2007 dated 19.05.2008 and proof of export documents produced by the Applicants are as under:

- (i) **ARE-1 No. 1 dated 28.04.2006 -**
 - (a) Respective C.Ex. Invoice No. 1 dated 04.05.2006;
 - (b) Packing List;
 - (c) Triplicate & Quadruplicate copies of ARE-1 duly endorsed by the Customs;
 - (d) E.P. copy of relevant Shipping Bill No. 4231453 dated 03.05.2006;
 - (e) Bill of Lading No. NSV/DUR-660912 dated 13.05.2006;
 - (f) Certificate of Export & realization bearing No. 559 dated 03.05.2008 in Appendix 25 issued by the realizing Bank i.e. Vijay Bank, Santa Cruz.
- (ii) **ARE-1 No. 6 dated 05.08.2006 -**
 - (a) Respective C.Ex Invoice No. 7 dated 1-.08.2006;
 - (b) Packing List;
 - (c) E.P. copy of relevant Shipping Bill No. 4509834 dated 10.08.2006;
 - (d) Bill of Lading;

- (e) Mate Receipt No. 68681 dated 20.08.2006;
- (f) Certificate of Export & realization bearing No. 560 dated 03.05.2008 in Appendix 25 issued by the realizing Bank i.e. Vijay Bank, Santa Cruz.

(iii) ARE-1 No.7 dated 05.08.2006 -

- (a) Respective C.Ex Invoice No. 8 dated 10.08.2006;
- (b) Packing List;
- (c) E.P. copy of relevant Shipping Bill No. 4509834 dated 10.08.2006;
- (d) Bill of Lading No. ISA VSV DXB 665277 dated 19.08.2006;
- (e) Mate Receipt No. 68682 dated 20.08.2006;

(f) Foreign Bills Transaction Advice dated 12.01.2008 duly stamped by the realizing Bank i.e. Vijay Bank, Santa Cruz.

(iv) ARE-1 No. 8 dated 14.09.2006 -

- (a) Respective C.Ex Invoice No. 9 dated 14.09.2006;
- (b) Packing List;
- (c) E.P. copy of relevant Shipping Bill No. 4593787 dated 13.09.2006;
- (d) Bill of Lading No. 6090140 DUR dated 28.09.2006;
- (e) Certificate of Export & realization bearing No. 558 dated 03.05.2008 in Appendix 25 issued by the realizing Bank i.e. Vijay Bank, Santa Cruz.

11. From the ~~above-mentioned~~ documents, Government observes ~~that the~~ bonafides of export can be established and therefore, the rebate claim should not be denied for non production of original & duplicate copy of ARE-1s.

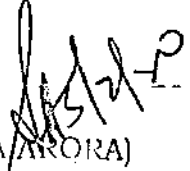
12. In view of the above, Government remands the matter back to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claim for rebate on the basis of the aforesaid documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents. However, the rebate

sanctioning authority shall not upon remand, reject the claim on the ground of the non-production of the original and duplicate copy of the ARE-I form. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

13. In view of above, Government sets aside the impugned Order-in-Appeal No. BR/127/TH-I/2013 dated 25.02.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

14. The revision application is allowed in terms of above.

15. So ordered.


(S.P. ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 168/2020-CX (WZ)/ASRA/Mumbai DATED 05.02.2020.

To,
M/s Standard Friction Components Ltd.,
Village Sarmal, Post: Washind,
Pal: Shahapur,
Dist: Thane 421 604.

Copy to:

1. The Commissioner (Appeals), GST & CX , Thane.
2. The Commissioner of GST & CX, Thane Rural,
3. The Deputy / Assistant Commissioner, GST & CX , Division A, Thane Rural.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file